IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DONALD CHARLES WILSON,

Plaintiff,

ORDER

14-cv-222-bbc

v.

DR. LORI ADAMS and DR. PATRICK MURPHY,

Defendants.

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In reviewing the July 9, 2014 order, dkt. #13, screening plaintiff Donald Charles Wilson's amended complaint, I realized I had omitted some defendants that should have been dismissed and dismissed some defendants on incorrect grounds.

First, plaintiff alleged in his amended complaint, dkt. #10, that Dr. David Smith, a dentist, has failed to treat him because defendant Smith determined that plaintiff's neck hardware or general neck problems (plaintiff is unclear on this point) were an impediment to Smith's ability to treat plaintiff. This allegation is insufficient to state an Eighth Amendment claim against defendant Smith because it says nothing that would suggest that Dr. Smith acted with "deliberate indifference" to plaintiff's medical needs. Farmer v. Brennan, 511 U.S. 825, 837 (1994) ("[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and *disregards* an excessive risk to inmate health or safety . . . .") (emphasis

added). Defendant Smith did not disregard or refuse to treat plaintiff's dental issues; rather, he was unable to treat them because of plaintiff's neck hardware or problems.

Furthermore, plaintiff does not appear to allege a state law claim of negligence against Dr. Smith because he lists only Drs. Gaanan and Murphy with respect to that claim. In any case, he has not alleged facts from which I could infer that Dr. Smith breached his duty of care. such as what Dr. Smith could have done differently. To the extent plaintiff is asserting a claim under the Americans with Disabilities Act, 42 U.S.C. § 12132, against defendant Smith, this claim fails as well. Plaintiff appears to be asserting an accommodation claim because he has not alleged that Dr. Smith acted with animus or discriminatory intent toward people with neck problems. Jaros v. Illinois Department of Corrections, 684 F.3d 667, 672 (7th Cir. 2012) ("Refusing to make reasonable accommodations is tantamount to denying access" to a state services, programs or activities.). However, because plaintiff does not identify any way that Dr. Smith could have treated him differently in light of his neck condition, plaintiff has not identified an appropriate accommodation Dr. Smith could have offered. Therefore, plaintiff may not proceed on his claims against defendant Smith, and he will be dismissed from this lawsuit.

Second, in the July 9, 2014 order, I concluded that plaintiff could not proceed on claims against several defendants, but I did not include them in the list of defendants being dismissed from the case. Accordingly, defendant D. Drawkiewicz and members of plaintiff's program review committee, defendants J. Bewzal, R. Mohnew, T. Tess, M. Bordini and M. Jones will be dismissed from the lawsuit.

Third, I dismissed defendants Thomas H. Bround, David Schwartz and Mindy Sownewtag in the July 9, 2014 order on the basis that I had dismissed plaintiff's previous lawsuit, 11-cv-725-bbc, for plaintiff's failure to exhaust administrative remedies and plaintiff did not allege in his new complaint that he had corrected that deficiency. (Plaintiff spelled defendants' names "Thomas Bowd, David Schwarz and Mindy Sonnentag" in the previous lawsuit but his allegations against them are the same in each suit so I assume they are the same people.) However, further review of 11-cv-725-bbc shows that these defendants were dismissed in that lawsuit because plaintiff's claims against them were barred by Heck v. Humphrey, 512 U.S. 477 (1994). (Plaintiff complained that the defendants should not have revoked his parole because he suffered from serious medical conditions.) Plaintiff has made similar allegations in this lawsuit, but he has not shown that his revocation was invalidated, as would be required for him to proceed on these claims in a § 1983 lawsuit. Id. at 487 (if plaintiff's claim would imply the invalidity of his conviction or sentence, "the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated"); Spencer v. Kemna, 523 U.S. 1, 17 (1998) (application of Heck to parole revocation hearing).

To the extent plaintiff attempts to recast his claims against defendants Bround, Schwartz and Sownewtag as Eighth Amendment claims for their failure to address his medical needs, plaintiff's claims still cannot proceed because he fails to state a claim. Not all state actors may be held responsible for a prisoner's medical care, and plaintiff has not shown why these defendants, who are administrators in parole revocation hearings and

appeals, would have a special responsibility to his medical needs. Burks v. Raemisch, 555 F.3d 592, 595 (7th Cir. 2009) (prison officials and other state actors are "entitled to relegate to the prison's medical staff the provision of good medical care.").

ORDER

IT IS ORDERED that the order entered on July 9, 2014, dkt. #13, is AMENDED as follows: plaintiff Donald Charles Wilson's amended complaint, dkt. #10, is DISMISSED against defendants Thomas H. Bround, David Schwartz and Mindy Sownewtag for his failure to state a claim and for failure to show that his claims are no longer barred by Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff's amended complaint, dkt. #10, is also DISMISSED against defendants Dr. David Smith, J. Bewzal, R. Mohnew, T. Tess, M. Bordini, M. Jones and D. Drawkiewicz for his failure to allege sufficient facts that state a claim against these defendants.

Entered this 10th day of July, 2014.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge